IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 750

BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, AFL-CIO, ET AL.

v.

FLORIDA EAST COAST RAILWAY COMPANY

No. 782

UNITED STATES OF AMERICA

v.

FLORIDA EAST COAST RAILWAY COMPANY, ET AL.

No. 783

FLORIDA EAST COAST RAILWAY COMPANY

v.

UNITED STATES OF AMERICA

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

CONSOLIDATED BRIEF OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION, AMICUS CURIAE

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TABLE OF CONTENTS

INDEX TO CITATIONS

CASES:

Page

STATUTES:

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PRELIMINARY STATEMENT

The Railway Labor Executives' Association (hereafter called "Association"), on whose behalf this brief as *amicus curiae* is presented, is a voluntary unincorporated Association with which are affiliated,

through their chief executives, twenty-two national and international railway labor organizations that are the duly authorized representatives under the Railway Labor Act of the vast majority of the Nation's railroad employees. The names of these individual organizations, some of which are petitioners in Case No. 750, as follows:

American Railway Supervisors' Association
American Train Dispatchers' Association
Brotherhood of Locomotive Firemen and Enginemen
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Brotherhood of Railroad Trainmen
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood Railway Carmen of America
Brotherhood of Sleeping Car Porters
Hotel and Restaurant Employees and Bartenders International Union
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
International Organization Masters, Mates and Pilots of America
National Marine Engineers' Beneficial Association
Order of Railway Conductors and Brakemen
Railroad Yardmasters of America
Railway Employes' Department, AFL-CIO
Seafarers' International Union of North America
Sheet Metal Workers' International Association
Switchmen's Union of North America
Transportation-Communication Employees Union

This Court has heretofore recognized the Association as a proper party to appear before it in litigation involving the interests of these affiliated organizations. *Interstate Commerce Commission* v. *Railway Labor Executives' Association*, 315 U.S. 373 (1942); *Railway Labor Executives' Association* v. *U. S.*, 339 U.S. 142 (1950); *American Trucking Association, Inc.* v. *United States*, 355 U.S. 141 (1957).

In accordance with the Rules of this Court, the consent of all parties to the cases under review has been obtained for the filing of this brief by the Association as *amicus curiae* and such consents have been filed with the Clerk of the Court. Three questions of vital importance to the Association concerning the interpretation and application of the Railway Labor Act are presented by these cases for decision. In our judgment, these questions are:

1. Whether a lawful strike by employees under the Railway Labor Act temporarily suspends for the period of such strike the obligations of the carrier involved under the Railway Labor Act and its collective bargaining agreements?

2. Whether, while a lawful strike against a railroad carrier is in progress, a Federal District Court may relieve such carrier from the obligations of the Railway Labor Act and collective bargaining agreements on the ground that such relief is necessary to enable the carrier to effectuate a right of self-help during the strike?

3. Whether a carrier subject to the Railway Labor Act, which has refused to arbitrate its dispute with its employees which is the subject matter of a legal strike against the carrier and which the employees have agreed to arbitrate, may invoke the equitable

processes of a Federal Court and be granted equitable relief relieving it of contractual and statutory obligations on the ground of necessity to effectuate the carrier's right of self-help during the strike?[1]

ARGUMENT

I

The Obligations of a Railroad Carrier Under the Railway Labor Act and Its Agreements Are Not Suspended During the Period of a Lawful Strike

The Florida East Coast Railway has contended that its obligation under its collective bargaining agreements and under the Railway Labor Act are suspended during the period of a lawful strike and are revived when the strike ends (R. 103).

The Court of Appeals considered this contention and rejected it as without merit. *Florida East Coast Railway Company* v. *Brotherhood of Railroad Trainmen,*

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[1] The Florida East Coast Railway Company, cross-petitioner in Case No. 783, has also raised the contention that the Federal district court had no jurisdiction to entertain the complaints of the United States and of the railway labor organizations representing its employees to require the carrier's compliance with its obligations under the Railway Labor Act because the dispute between the parties was a dispute concerning the interpretation and application of collective bargaining agreements over which the National Railroad Adjustment Board has exclusive jurisdiction pursuant to the provisions of Section 3 of the Railway Labor Act (45 U.S.C.A., Section 153). The Court of Appeals rejected this contention in its earlier decision in *Florida East Coast Railway Company* v. *Brotherhood of Railroad Trainmen*, 336 F.2d 172, *cert. den.* 379 U.S. 990, which opinion was followed in the present case. The Court found (page 179) that the present situation is one in which the carrier has unilaterally instituted wholesale changes in the terms and conditions of its collective bargaining agreements without recourse to the procedures of the Railway Labor Act and does not involve any controversy over the interpretation and application of the agreements. This holding clearly conforms to the facts

336 F.2d 172, 180 (1964), *cert. den.* 379 U.S. 990, followed in the present case. The Court's findings on this read as follows:

> "Opposed both by the BRT and the United States, FEC urges that the collective bargaining agreement is wholly suspended during the strike and that any other holding will make it impossible to avail itself of its right to continue its business during the strike. It is clear that the suspension argument has no merit. The BRT is still the bargaining representative of all the employees in the crafts of trainmen and yardmen whether union members or not. Steele v. L.&N.R.R., 1944, 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173. The employees of FEC are entitled to the benefit of the terms of the agreement, and the FEC may not supersede the agreement by individual contracts, whether consented to by the employees or not. Order of Railroad Telegraphers v. Ry. Express Agencies, 1944, 321 U.S. 342, 346, 64 S.Ct. 582, 88 L.Ed. 788."

It is submitted that this holding of the Court of Appeals is clearly correct. The argument of the Florida East Coast Railway Company is to the effect that the Railway Labor Act itself is suspended with respect to a carrier's obligations during the period of a lawful strike. This is made clear by the statement of the carrier in its cross-petition in a writ of certiorari in Case No. 783 in which it states (p. 15) that "The Court should consider the entire issue, and decide whether the Act applies in such circumstances unconditionally (as the Government maintains), conditionally as the Court of Appeals held, or not at all, as the railroad believes." Thus, the carrier contends that it has no obligations of any kind under the Railway Labor Act once a lawful strike begins.

This would mean the suspension during the period of a lawful strike of the obligations of the carrier, among others, "to make and maintain agreements" (Section 2, First); the suspension of its duties and obligations to consider all disputes with its employees in conferences with representatives of the employees (Section 2, Second); the suspension of its obligation to refrain from interference, influence, or coercion over the choice of employees' representatives to confer and deal with the carrier (Section 2, Third); the suspension of its obligation to not interfere with the right of its employees to join any national organization, and the carrier's further obligation not to interfere in any way with the organization of its employees (Section 2, Fourth); the suspension of its obligation to refrain from requiring any person seeking employment to sign a contract or agreement promising to join or not to join a labor organization (Section 2, Fifth); the suspension of its obligation to submit disputes concerning the interpretation and application of collective bargaining agreements to the National Railroad Adjustment Board for final and binding determination (Section 2, Sixth); the suspension of its obligation not to change the rules or working conditions of its employees embodied in its agreements except in the manner prescribed therein or in Section 6 of the statute (Section 2, Seventh); and the suspension of its obligation to follow the procedures of Sections 5 and 6 of the statute.

Finally, the carrier's argument, if accepted, would mean that once a strike had begun it would not be possible for the President of the United States to appoint a Presidential Emergency Board under Section 10 of the statute to engage in fact-finding and suggest or recommend a basis for settlement of the

dispute, and to restore normal labor relations pending the Board's report and for 30 days thereafter, even though the President had found that it threatened substantially to interrupt interstate commerce to such a degree as to deprive a section of the country of essential transportation services. The carrier's argument, if valid, would also of necessity relieve the employees and their representatives of all obligations under the statute.

In short, the carrier's argument is to the effect that Congress intended to remove, once a lawful strike has begun, all statutory requirements on the parties with respect to continuing efforts to restore normal relations in the interest of interstate commerce, all statutory procedures which would assist the parties in settling their disputes, all protection for employees, including the statutory prohibition against forcing them into signing "yellow-dog" contracts, and to leave the whole matter to a species of jungle warfare limited only by the criminal statutes.[2]

The Florida East Coast Railway primarily relies upon the decision of this Court in *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio Railroad Company, et al.*, 372 U.S. 284 (1963), to support this sweeping proposition. However, it is submitted that this decision does not provide the basis for any such drastic conclusions. All that this case did was to clarify that once employees have exhausted all of the procedures of the Railway Labor Act in major con-

[2] The carrier's argument would necessarily include the suspension of even the criminal requirements of Section 2, Tenth, of the Railway Labor Act or of any other statute, the application of which related to obligations and duties under the Railway Labor Act.

tract disputes, they are then legally free to pursue their demands by means of a strike and that once a carrier subject to that statute has exhausted all of the statutory procedures with respect to its contract proposal, a carrier is legally free to put the proposals into effect. The decision does not, as the Florida East Coast Railway suggests, hold that the requirements of the Railway Labor Act are suspended once a lawful strike begins or that a carrier is free to disregard its collective bargaining agreements although the carrier may put into effect contract proposals that have been fully processed under the statute and as to which agreement has not been reached.

The Florida East Coast Railway also suggests that its position is supported by decisions of this Court under the National Labor Relations Act[3] and by determinations of the National Railroad Adjustment Board.[4]

The National Labor Relations Act decisions dealt with matters arising under specific provisions of that statute. The Railway Labor Act is a different statute with different procedures and requirements designed to govern management-labor relations in the railroad

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[3] The carrier has referred to the decisions in *N.L.R.B.* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938); *N.L.R.B.* v. *Insurance Agents International Union*, 361 U.S. 477 (1960); *N.L.R.B.* v. *Erie Resistor Corp.*, 373 U.S. 221 (1963); *Textile Workers* v. *Darlington Mfg. Co.*, 380 U.S. 263 (1965); *N.L.R.B.* v. *Brown*, 380 U.S. 278, 286 (1965); and *American Shipbuilding Co.* v. *N.L.R.B.*, 380 U.S. 300 (1965).

[4] The carrier has referred to First Division Awards No. 13,341 (Vol. 89 of First Division Awards, page 821); No. 17,055 (Vol. 122, First Division Awards, page 38); and Third Division Awards No. 5042 (Vol. 48, Third Division Awards, page 291); No. 5074 (Vol. 48, Third Division Awards, page 583); No. 10,197 (Vol. 98, Third Division Awards, page 73).

and air transport industries in which there is a particular public interest to achieve stability. See: *Local Union No. 25 of International Brotherhood of Teamsters* v. *New York, New Haven & Hartford Railroad Company,* 350 U.S. 155, reh. den. 350 U.S. 977 (1956). Moreover, none of the cases cited by the Florida East Coast Railway Company under the National Labor Relations Act holds that a lawful strike suspends the requirements of that statute.

In addition, cases under the National Labor Relations Act have held that a strike does not terminate a collective bargaining agreement (*International Union of Operating Engineers* v. *Dahlem Construction Co.,* 193 F. 2d 470, at page 475 (6th Cir., 1951); *Boeing Airplane Co.* v. *Aeronautical Industrial District Lodge No. 751,* 91 F. Supp. 596 (D.C. D.C., 1950), aff'd *Boeing Airplane Co.* v. *National Labor Relations Board,* 174 F. 2d 988 (D.C. Cir., 1949)), and that statutory requirements with respect to negotiations are not suspended by a strike. *National Labor Relations Board* v. *Small Tube Products, Inc.,* 319 F. 2d 561 (3rd Cir., 1963); *National Labor Relations Board* v. *Pecheur Lozenge Co.,* 209 F. 2d 393, 403 (2nd Cir., 1953); *National Labor Relations Board* v. *Remington Rand, Inc.,* 130 F. 2d 919, 927 (2nd Cir., 1942).

Similarly, the Adjustment Board decisions to which the carrier has referred do not hold that a lawful strike suspends statutory requirements. In each case, the Board interpreted the particular agreement before it and held that the employee claim was not supported by any provision thereof.

The Florida East Coast Railway contends that the suspension of the obligations of the Railway Labor

Act during a strike is necessary to make effective the carrier's right of self-help. The carrier suggests that once the strike begins, there are no limitations to restrict the union's conduct of the strike or control over its duration. This argument ignores the fact that all of the statutory requirements enumerated above with some exceptions are also limitations upon the unions even though a strike is in progress. Thus, the unions are under a continuing obligation to meet the statutory requirements with respect to the settlement of all their disputes, whether they arise out of the making of contracts or otherwise, and to use the procedures of the statutes to amend agreements.

Furthermore, the control of the duration of the strike is as much in the hands of the carrier as those of the union.

The carrier's argument is really one to the effect that its compliance with statutory obligations during a lawful strike, including observance of the terms of collective bargaining agreements, will be economically burdensome and will impede its ability to fight the strike. Thus, its argument is that it should be relieved from all its statutory and contractual obligations in order to be assisted in defeating the strike. It is submitted that this contention has no merit in terms of the statute or of the public interest involved. The public interest is that the strike should end as quickly as possible through negotiation pursuant to the statutory procedures. All of the provisions of the Railway Labor Act, as well as its legislative history, bespeak the fact that its purposes are to provide a framework to assist in the settlement of all disputes between

employees and carriers subject to the statute.[5] There is not the slightest indication in either the statutory language or the legislative history that Congress intended that once a lawful strike began, the statutory requirements should be abandoned. The acceptance of the carrier's proposition would increase the likelihood of strikes contrary to statutory purposes by reducing carrier risks and increasing incentives not to settle by negotiation, mediation, or arbitration. Such acceptance would, at the same time, decrease the likelihood of prompt settlement of strikes by widening the area of the dispute and by eliminating the statutory requirements with respect to negotiation and mediation which Congress has found most useful through some 40 years' experience under the Railway Labor Act. The progress and continuation of the present dispute, bolstered by the position the carrier is taking in this litigation, is ample evidence of the correctness of these conclusions.

II

The District Court Did Not Have Authority Under the Railway Labor Act to Relieve the Florida East Coast Railway of Some of Its Obligations Under the Railway Labor Act and the Carrier's Agreements

While the Court of Appeals rejected the contention of the Florida East Coast Railway that the requirements of the Railway Labor Act and the obligations of its collective bargaining agreements were suspended during a lawful strike, that Court created an entirely new concept that the Federal Courts have authority to

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[5] Particularly see Senate Report No. 905, 74th Congress, 1st Sess., pages 1-3 (1935); H. R. Rept. No. 2243, 74th Cong., 2nd Sess., pages 3-4 (1936).

relieve a carrier from such of its statutory and contractual obligations as are deemed necessary to enable the carrier to effectuate its right of self-help. Pursuant to this holding, the District Court has relieved the carrier of a statutory obligation to exhaust the procedures of the statute for the negotiation of practices previously unilaterally imposed in violation of the statute and of its agreements (R. 223). It is respectfully submitted that there is no basis in the statute or the legislative history thereof to support this conclusion.

The decision of the Court of Appeals is predicated upon the proposition that since the carrier has a legal right to operate during the period of a strike, the courts are required to fashion a rule of law which will enable the carrier to effectively exercise such right. Otherwise, the Court says the weight of the law will be on the side of the employees. The view of the Court of Appeals is summarized in the following finding: (*Florida East Coast Railway Company* v. *Brotherhood of Railroad Trainmen*, 336 F. 2d 172 at page 181)

> "Since the right surely exists, the law must accommodate itself to the exercise of this power in a way that will make it effectual. Brotherhood of Railroad Trainmen v. Chicago R. & I. R.R., 1957, 353 U.S. 30, 40, 77 S.Ct. 635, 1 L.Ed.2d 622. Anything less either temporizes with the so-far-determined policy against compulsory arbitration, or puts the full weight of law on the side of the employees by making it impossible for the Railroad to carry on save on the terms and conditions imposed by the organized employees who now refuse to perform as agreed."

There is no basis whatsoever in the statutory language for this proposition. The language of the statute

is mandatory in placing obligations upon employees and carriers alike without qualification based on the existence or non-existence of a strike. Thus, Section 2, First, provides that it shall "be the duty of all carriers * * * and employees to exert every reasonable effort to make and maintain agreements". Section 2, Second, provides that all disputes "shall be considered in conference between representatives". Section 2, Third, provides that "representatives shall be designated by the respective parties without interference, influence, or coercion" and that "neither party shall in any way interfere". Section 2, Fourth, provides that "Employees shall have the right to organize and bargain collectively" and that "no carrier * * * shall deny or in any way question such right of its employees". Likewise, Section 2, Fifth and Sixth, provide mandatory requirements and Section 2, Seventh, contains an unqualified prohibition against a carrier changing rates of pay, rules, or working conditions of its employees in agreements except in the manner prescribed in such agreements or in Section 6 of the statute. Neither the Court of Appeals nor the Florida East Coast Railway can cite any legislative history which would in any way qualify or modify the mandatory obligations of the statute so as to provide a basis for a court to relieve a carrier of obligations thereunder.

The decision of the Court of Appeals also assumes that the right of a carrier to operate during the period of a strike is an absolute right. The rationale of its decision is such that the carrier would have to be relieved of any statutory obligation of any kind, shape, or description which impeded in any way its ability to carry on an operation as an effective weapon. Thus, as a matter of legal concept, the only restriction on the authority of the District Court to relieve the car-

rier of any contractual or statutory obligations under either the Railway Labor Act or under any other statute would be the necessity for such relief to effectuate the carrier's right to operate. The same logic would require that unions similarly be relieved of all statutory obligations deemed necessary for them to effectuate their legal right to strike.

No detailed argument is necessary to make clear that this acceptance of this proposition starts the Federal Courts down a long road in which they become the sole arbiters in labor disputes, not of what is the law, but of what is needed by a carrier to operate during a strike and by unions to carry on strikes. The decision substitutes the courts for Congress in determining the applicability of statutory requirements during a lawful strike. If the application of the statutory requirements to a carrier during the period of a lawful strike does in fact impose any undue burden upon it and unduly interferes with its operating as a strike weapon, then the solution for this problem clearly lies with the Congress and not with efforts by the courts to redress a claimed imbalance by writing the statute out of existence.

This Court has recently considered the "necessity" argument as advanced by a labor organization in support of a particular interpretation of a Federal statute, in that case Title 28 of the Judicial Code, Section 1332, and held that the union's arguments, however appealing, were addressed to an inappropriate forum and "ought to be made to the Congress and not to the courts". *United Steelworkers* v. *Bouligny*, ... U.S. ..., 15 L. Ed. 2d 217 (decided November 22, 1965). The Association does not concede that there is in fact

any need for the Florida East Coast Railway to be relieved of any obligations under the Railway Labor Act. However, this is not a proper matter for the courts. The division of authority in our government requires that any contentions of the carriers in that regard be addressed to the Congress and not to the courts.

Finally, it should be observed that the decision of the Court of Appeals disregards the provisions of the collective bargaining agreements here involved. Those agreements, like agreements generally throughout the railroad industry, and unlike agreements under the National Labor Relations Act, do not contain a specific termination date but provide that they are to continue in effect until revised in accordance with the statute.[6] Such provisions do not contain any clauses relieving the carrier from its contractual responsibility to carry out the statutory procedures with respect to the revision of the agreements in cases where a lawful strike is conducted against a carrier. Thus, as a matter of simple contract law the carrier has contracted and agreed to abide by the statutory procedures. See: *International Union of Operating Engineers* v. *Dahlem Construction Co.*, 193 F. 2d 470, at page 475 (6th Cir., 1951); *Boeing Airplane Co.* v. *Aeronautical Industrial District Lodge No. 751*, 91 F. Supp. 596 (D.C. D.C., 1950), aff'd *Boeing Airplane Co.* v. *National Labor Relations Board*, 174 F. 2d 988 (D.C. Cir., 1949); *International Association of Machinists* v. *Northwest Airlines*, 304 F. 2d 206 (8th Cir., 1962).

[6] It is the understanding of the Association that these agreements have not been printed in the record before the Court because they are bulky and already in printed form, but that instead representative agreements have been supplied to the Court.

III

The Florida East Coast Railway Was Barred from the Relief Granted by Its Failure to Make Every Reasonable Effort to Settle the Underlying Labor Dispute

Assuming *arguendo* that the District Court had authority to grant relief of the type here involved to a carrier in an appropriate situation, it is submitted that the Florida East Coast Railway was barred from such relief by its failure to make every reasonable effort to settle the underlying labor dispute which it claims necessitated such relief. In *Brotherhood of Railroad Trainmen* v. *Toledo, Peoria & Western Railroad*, 321 U.S. 50 (1954), this Court held that a carrier which had refused to arbitrate a labor dispute, which the labor organization involved had agreed to arbitrate, could not invoke the equitable processes of a Federal court for injunctive relief to prevent alleged illegal actions, i.e. violence, during the course of a railroad strike. The decision was based upon the provisions of Section 8 of the Norris-LaGuardia Act.[7]

In *Rutland Railway Corporation* v. *Brotherhood of Locomotive Engineers*, 307 F. 2d 21 (1962), the United States Court of Appeals for the Second Circuit invoked the same principle to bar injunctive relief against a strike to a railroad which had unilaterally made changes in its operations in violation of existing collective bargaining agreements without negotiations with the labor organizations involved. The decision

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[7] Section 8 of the Norris-LaGuardia Act (29 U.S.C.A., Section 108) reads as follows: "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

of the Second Circuit equated the requirements of Section 8 of the Norris-LaGuardia Act with the nonstatutory duty of "clean hands" imposed on all who seek jurisdiction in a court of equity.[8]

In the present case, the Florida East Coast Railway applied to the District Court for relief in the form of approval of certain practices which were in violation of its collective bargaining agreement (R. 189, 216). The District Court granted the application with respect to certain of these practices (R. 223-225). At the time this application was made, the Florida East Coast Railway was in violation of the Railway Labor Act in having unilaterally instituted these practices without utilizing the procedures of the statute to obtain agreement thereto. (R. 180-191.) Thus, the carrier was in the same position as was the railroad seeking injunctive relief in the *Rutland* case.

Moreover, the Florida East Coast Railway was continuing to refuse to arbitrate the underlying labor dispute which its application asserted gave rise to a need for the requested relief, although the labor organizations involved had agreed to such arbitration (Exhibit Vol. 1, pp. 459, 461).[9] Thus, the Florida East Coast Railway at the time it requested and was granted relief from the requirements of the Railway Labor Act with respect to the need for negotiating the certain changes in working conditions embodied in its collective bargaining agreements was in the same position as was the railroad in the *Toledo, Peoria & Western* case in that it had not exhausted every reasonable

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[8] Footnote 13, page 42.

[9] Originally, both the labor organizations and the railroad had refused the proffer of arbitration by the National Mediation Board. Subsequently, the unions agreed to such arbitration while the carrier refused. This was the same situation which prevailed in the *Toledo, Peoria & Western* case.

effort to settle the labor dispute which gave rise to the claim for relief and thus would not qualify for such relief both under the applicable statute and under the equitable "clean hands" principle.

The Association therefore respectfully submits that even if the District Court had power to grant relief from the statutory requirements in an appropriate case, the Florida East Coast Railway was barred from obtaining such relief in this case.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals in the above-entitled cases should be reversed and the cases remanded with directions to the District Court to dismiss the application of the Florida East Coast Railway for relief from its obligations under the Railway Labor Act and its collective bargaining agreements.

Respectfully submitted,

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